

Serial No. 09/863,101

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

1.-20. Cancelled

21. (currently amended) A method for identifying and treating a patient disposed to respond favorably to a HER2 antibody antagonist for treating breast cancer, which method comprises detecting *her2* gene amplification in tumor cells in a tissue sample from the patient and treating the patient with *her2* gene amplification with the HER2 antibody antagonist in an amount effective to treat the breast cancer.

22-24. Cancelled

25. (currently amended) The method of claim ~~24~~ 21 wherein the HER2 antibody is rhuMab 4D5 (Herceptin®).

26. (previously presented) The method of claim 21 wherein *Her2* gene amplification is detected by detecting fluorescence of a fluorescent-labeled nucleic acid probe hybridized to the gene.